

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

BOISE PAVING & ASPHALT CO.,

Employer,

and

LABORERS INTERNATIONAL UNION  
OF NORTH AMERICA,

and

Cases 27-RC-8064, 8066, and 8067

TEAMSTERS JOINT COUNCIL NO. 3,  
FOR LOCAL 483,

and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL NO. 370,

Joint Petitioner.

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**DECISION AND DIRECTION OF ELECTION**

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Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1), 2(6) and 7 of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All employees employed by the Employer, including all drivers, operators and laborers.

**EXCLUDED:** All office clerical employees, guards and supervisors as defined in the Act.1/

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently

replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**Laborers International Union Of North America,  
and  
Teamsters Joint Council No. 3, For Local 483,  
and  
International Union Of Operating Engineers, Local No. 370.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80120-5433 on or before August 23, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **August 30, 2000**.

**DATED** at Denver, Colorado this 16th day of August 2000.

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B. Allan Benson  
Regional Director  
National Labor Relations Board  
700 North Tower, Dominion Plaza  
600 Seventeenth Street  
Denver, Colorado 80202-5433

1/ The Employer, Boise Paving & Asphalt Co., is an Idaho corporation engaged in street and road construction out of its facility in Boise, Idaho. During the past 12 months, the Employer has purchased and received at its Boise, Idaho facility goods and materials valued in excess of \$50,000 from suppliers within the State of Idaho, who, in turn, received such goods and materials directly from manufacturers located outside the State of Idaho.

The unions who filed the petitions herein amended their petitions at the hearing to seek to represent, as joint representative, all employees of the Employer, excluding supervisors, guards and clerical employee as defined by the Act. The Employer maintains that only separate units of drivers, operators and laborers, each represented by a separate labor organization, are appropriate.

The Employer employs three classifications of employees: drivers, operators, and laborers. There are approximately 40 drivers who operate large trucks to haul gravel, asphalt, water and dirt to and from road construction projects. There are approximately 26 operators who operate heavy equipment such as "blades," front-end loaders, backhoes, pavers and rollers. There are approximately 17 laborers who use shovels, rakes, compactors and other hand-tools.

During the construction season, the Employer completes an average of five to six road construction projects. Each project is staffed with a crew of two to six operators and laborers. Drivers are sent to and from projects, as needed, by dispatcher Dave Neilson. Each crew is directed by a single foreman or

supervisor, who also directs the drivers while they are at the projects. All crews are overseen by an “overall supervisor”, Dan Burnan.

When instructed to do so by a foreman or supervisor, drivers assist laborers and operators with groundwork by utilizing hand-tools or loaders. Drivers engage in groundwork nearly every day, sometimes spending half of the workday on such activities. Operators also regularly use hand-tools to assist laborers, and they commonly assist laborers (or foremen) in the placement of ground stakes. Operators and laborers also regularly operate certain types of large trucks.

Crews generally consist of the same individuals, with occasional interchange between crews. There has also been some interchange between classifications.

All drivers are required to possess Commercial Driver’s Licenses (CDL). Operators and laborers are not required to possess CDLs, but some do.

Each classification has a different starting, hourly wage. Laborers have the lowest starting wage, which is approximately \$1 to \$2 less than the starting wage received by drivers and operators. Cost of living increases are granted on a percentage basis to all classifications, but merit or incentive increases may be granted on an individual basis. During the past year, the Employer instituted an across-the-board, one-percent wage decrease. Each classification of employee receives the same health, dental and vision insurance and 401(K) benefits. The Employer’s personnel manual and policies apply uniformly to all employees.

When the construction season ends in late fall, the Employer generally lays off all employees. The same employees are then recalled on an as-needed basis when the construction season begins in spring.

Until the mid-1980's, the Employer was party to a multi-employer collective bargaining agreement ("Five Craft Agreement") with the Joint Petitioner and two other labor organizations as the signatory joint representative. All of the Employer's employees were covered by these agreements. Specific terms and conditions of employment particularized for the different groups, were set forth in separate addenda. These agreements were negotiated jointly by the Five Craft Joint Representative and the Employer. Two employers operating in the same geographic area as the Employer are signatory to the current Five Craft Agreement for its full term. Also, over the past year, 22 employers were signatory to the agreement on a project basis.

As a general rule, the Board will find a unit consisting of multiple classifications of employees appropriate where there is a community of interest among the classifications. The predominant factors to be considered in determining community of interest are functional integration, work situs, working conditions, contact, interchange, pay and benefits, supervision, and skill or training. *Elite Limousine Plus, Inc.*, 324 NLRB 992, 1004 (1997). The record here amply supports a finding that the Employer's drivers, operators and laborers share a community of interest.

The record reveals that the function of each category of employee is integrated with and dependent upon the function of the other categories.

Operators clear and grade the road surface with backhoes, loaders and other heavy equipment, while laborers use hand-tools to shape and finish the areas developed by the operators. Operators then load the excavated earth into trucks driven by the drivers, who remove the dirt from the project. Drivers then bring to the project the asphalt and other materials that operators pave and roll and that laborers shovel and rake. Each function is essential to the completion of the roadway.

In addition to this integration, the record demonstrates that employees in all classifications have the same work situs, similar working conditions and substantial contact and interchange. As discussed, to construct a road, all employees must necessarily converge at the same site. While there, the drivers, operators, and laborers work side-by-side in executing their integrated functions. They must, for example, work closely to assure that dirt is properly loaded into trucks or that asphalt is properly poured onto the road surface for paving and rolling. More importantly, drivers and operators spend a substantial amount of their workday side-by-side with laborers and/or operators shoveling, raking, placing stakes and generally carrying out those manual tasks that are essential to the completing of the roadway. Similarly, operators sometimes drive trucks, drivers sometimes operate heavy equipment, and laborers sometimes operate heavy equipment and trucks. There has also been some permanent interchange of employees between classifications.

The record also reflects that all classifications have essentially the same pay and benefits and are subject to the same personnel policies. While the

starting wage for each classification differs, the difference is not significant and employees across classifications may earn the same wage on the basis of individual merit or incentive increases.

Similarly, the record indicates that drivers, operators and laborers have common supervision. All employees, while at the project site, are directed and managed by a single foreman or supervisor. All projects, in turn, are directed and managed by a single “overall supervisor.” In short, other than limited radio instructions given by the dispatcher, drivers have precisely the same supervision as operators and laborers.

Finally, while the record contains conclusory testimony that employees in different classifications possess different skills, it appears that this difference is primarily due to greater experience on the job rather than any formal schooling or specialized training. Moreover, as already discussed, it is evident that employees in each classification are sufficiently skilled in the tasks of the other classifications to be able to perform many of those tasks on a regular basis.

Based upon the foregoing, the record establishes that drivers, operators and laborers possess a sufficient community of interest to warrant their inclusion in a single unit. See *Tri-County Building Supplies, Inc.*, 331 NLRB No. 125 (2000); *Atlanta Division of S.J. Grove and Sons Co.*, 267 NLRB 175 (1983); *Granite Minerals Inc.*, 254 NLRB 1047, 1048 (1981).

Also supporting the conclusion that a single unit of drivers, operators and laborers is an appropriate unit is the fact that, for many years, the Employer bargained over these employees in a single unit. While the Employer offered



conclusory testimony that the inclusion of these employees in a single unit presented difficulties in bargaining and contract administration, the record contains no concrete example of any such difficulty. Nor does the record contain evidence as to how the perceived difficulties would be avoided by bargaining with each classification in separate units. Moreover, the evidence reflects that many construction employers in the Employer's geographic area continue to bargain with drivers, operators and laborers in a single unit. There is no evidence that these employers experience difficulties in bargaining or contract administration.

Thus, where drivers, operators and laborers share a community of interest, where there is a history of collective bargaining in a single unit of these employees, and where no labor organization seeks to represent any classification in a separate unit, I find that a single unit of drivers, operators and laborers is an appropriate unit. *Del-Mont Construction Co.*, 150 NLRB 85, 87-87 (1964). For essentially the same reasons, I reject the Employer's contention that each classification of employee is entitled to a choice between separate or joint representation. *Vinco Corp.*, 111 NLRB 1038, 1040 (1955).

I further reject the Employer's contention that the Joint Petitioner cannot be certified as the joint representative of the employees in the unit. The unions have indicated on the record that they now intend to bargain, and that they have in the past successfully bargained, jointly for the employees in the unit. Under these circumstances, it is appropriate that the Joint Petitioner appear on the ballot and, if so designated by the employees, be certified as their joint

representative. *Gordon B. Irvine*, 124 NLRB 217, 218 n.2 (1959); *Mid-South Packers, Inc.*, 120 NLRB 495, 497 (1958).

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